



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Essex Electro Engineers, Inc.

File: B-232675

Date: January 18, 1989

DIGEST

1. Transcript of questions and answers raised at pre-bid conference, which is attached to and incorporated into solicitation amendment furnished to all bidders by contracting officer, is part of the amendment and therefore had the effect of amending the solicitation.

2. Bid is not nonresponsive where bidder omitted price for duplicative data item which was deleted by amendment. Moreover, a contracting officer may properly waive a price omission as a minor informality where, as here, the defect is immaterial in that proposed awardee offered and is legally obligated to provide required data under different solicitation provision, and waiver will not be prejudicial to other bidders.

DECISION

Essex Electro Engineers, Inc. protests the proposed award of a contract to Bruce Industries, Inc. under invitation for bids (IFB) No. M00027-88-B-0049, issued by the Marine Corps for dummy load generator sets, including supporting technical data. Essex contends that Bruce's bid should be found nonresponsive because it did not contain a price for provisioning data required under the solicitation.

We deny the protest.

The IFB was issued on April 19, 1988. On May 20, a pre-bid conference was held to answer questions regarding solicitation requirements. Approximately 14 bidders were represented at the conference, including Essex. By amendment 2, issued June 1, the Marine Corps corrected and clarified certain solicitation provisions and incorporated a transcript of the questions and answers raised at the pre-bid conference as part of that amendment. Additionally, a portion of that transcript stated that "(a)n amendment to the

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solicitation will be issued which will summarize the conference. The questions and answers will be made a part of that amendment. If a discrepancy exists between what is said at this conference and the solicitation and its amendments, the solicitation and its amendments will govern." (Emphasis added.)

At the pre-bid conference, it was brought to the agency's attention that a solicitation requirement for provisioning technical data was duplicative in nature since the same requirement was listed under two different contract line item numbers (CLINs). Under CLIN 8, the provisioning data requirement was identified as F001 and under CLIN 10 as H007. All parties are in agreement that the CLIN 10 requirement includes the same data required under CLIN 8. The portion of the pre-bid conference transcript in question affirms the agency's need for only one requirement for provisioning data and reads as follows:

"Q.43: Please confirm requirement for two PPLI (F001 and H007).

"A.43: The requirement is for one PPLI.
Delete F001 and replace with H007."

The Marine Corps explains that this question and answer at the pre-bid conference eliminated the original CLIN 8 (i.e. F001) data requirement from the solicitation which duplicated the data (i.e. H007) required under CLIN 10. The agency reports that the solicitation amendment explicitly incorporated the transcript and rectified the duplication problem in accordance with the agency's need to obtain the provisioning data only once under the solicitation. The agency subsequently eliminated CLIN 8 from the criteria for bid evaluation.

Despite Essex's contention that the pre-bid conference transcript does not have the force of a solicitation amendment, we find that since the transcript was attached to, referenced in, and explicitly made a part of amendment 2, which was furnished to all bidders by the contracting officer under her name, the transcript substantially meets the essential requirements for an amendment, and the information therein was therefore binding on all bidders. See Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474. Indeed, the protester essentially concedes that the attached transcript has the effect of a solicitation amendment since

Essex states that it followed the literal direction of this transcript provision and deleted any price for the F001 data from its bid, but offered its price for the H007 data under CLIN 8, rather than under CLIN 10.^{1/}

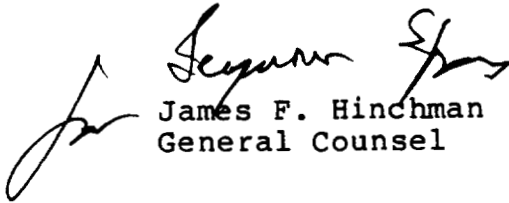
In accordance with our finding that CLIN 8 was effectively deleted from the solicitation's requirements by amendment 2, which incorporated the pre-bid conference transcript, we find Essex's contention that Bruce's bid is nonresponsive for failing to provide a price for CLIN 8 to be without merit since no price was required. Responsiveness deals with a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or services called for by the material terms of the IFB. A-1 Pure Ice Co., B-215215, Sept. 25, 1984, 84-2 CPD ¶ 357. A solicitation requirement is not material, however, if the government does not need the information in order to evaluate bids or the information does not have an impact on the bidder's promise to perform as specified. See American Spare Parts, Inc., B-224745, Jan. 2, 1987, 87-1 CPD ¶ 4. Here, any data requirement under CLIN 8 was deleted by amendment, prices offered for CLIN 8 were not used to evaluate bids, and Bruce has promised, and is legally obligated, to provide the required provisioning data under CLIN 10.

Furthermore, regardless of our finding that the pre-bid conference transcript constitutes part of amendment 2, we find that any alleged defect in Bruce's bid for failing to submit a price for CLIN 8 is a matter of form and not of substance and may, in any event, be waived by the contracting officer as a minor informality which does not render the bid nonresponsive. See Federal Acquisition Regulation § 14.405 (FAC 84-12); see Astrophysics Research Corp., 66 Comp. Gen. 211 (1987), 87-1 CPD ¶ 65. It is clear from the record that the Marine Corps requires only one provisioning data item. Whether a bidder here offers that data item under CLIN 8 or CLIN 10 is of no material consequence since the agency has evaluated the bids

^{1/} We note that although this statement cannot be readily verified from the face of Essex's bid, since Essex bid "not separately priced" for both CLIN 8 and CLIN 10, we find that it does, in any event, constitute an admission by Essex that Essex bid only once (i.e. under CLIN 8 and not CLIN 10) for the provisioning data requirement. We note that Bruce also bid only once for the same data (i.e. under CLIN 10). Thus, the protester cannot be found to have been prejudiced by either the amendment's effect or Bruce's failure to provide a price for CLIN 8.

equally, in accordance with its need for one provisioning data item, and since the proposed awardee is legally obligated to provide that data. Essex has also failed to show that competition has been adversely affected by the agency's actions or that it has been prejudiced in any way. We conclude that Bruce's bid meets all of the material requirements of the solicitation and that the Marine Corps properly found it responsive.

The protest is denied.



James F. Hinchman
General Counsel